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10/537,140

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Tullio J. DeCollibus

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EXAMINER

MAUST, TIMOTHY LEWIS

ART UNIT

PAPER NUMBER

3751

MAIL DATE

DELIVERY MODE

12/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/537,140 | Applicant(s) DECOLLIBUS ET AL. | |
| | Examiner Timothy L. Maust | Art Unit 3751 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-6, 11, 15-22 and 24-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4-6 and 24 is/are allowed.
- 6) ☒ Claim(s) 11, 15-22 and 25-28 is/are rejected.
- 7) ☒ Claim(s) 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/22/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Allowable Subject Matter

The indicated allowability of claims 4, 11 and 15 is withdrawn in view of the newly discovered reference(s) to Inglese. Rejections based on the newly cited reference(s) follow. Claims 4-6, 11, 15-22 and 24-28 remain pending in the case.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 11, 15, 19, 21 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Inglese (2004/0105741 A1).

Regarding claims 11, 15, the Barry reference discloses a concrete recovery system, comprising:

A "collector" (100) having an "attachment means" (140a-d or 190a-d);
a pivotal chute extension (S; pivotal chute extensions are inherent to cement truck mixing systems), a "container" (BT in Figure 6); and
a "conduit" (H). Further, the concrete is essentially collected from the ground since the collector rests on the ground.

In regard to claims 19 and 21, see "inlet and outlet ports" (130 and 105 in Figures 8B and 9).

In regard to claim 22, the pump on the truck (container BT) suctions concrete through hose (H).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16, 17 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Inglese in view of Jamieson.

The Inglese reference discloses the invention substantially as claimed (discussed supra), but don't disclose a scraper, which is further capable of fracturing concrete. The Jamieson reference discloses another cement truck chute having a scraping tool to clean out and break up concrete from the chute (see col. 1, lines 23-47; in particular, lines 40-43). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a scraper (if not already) in the Inglese system in view of the teachings of the Jamieson reference in order to scrape, break up concrete and clean the cement chutes of the system.

Claims 20, 25, 26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Inglese in view of Connard, III (Connard).

Regarding claims 20 and 25, the Inglese reference discloses the invention substantially as claimed (discussed supra), but don't disclose separating the particulates from the concrete slurry and a shutoff valve. However, the Connard reference discloses another concrete collecting device having a collector (16) and filter basket (18) for collecting and separating particulates from the cement slurry and a shutoff valve (56) for controlling the flow of fluid from the outlet port.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute a collector having a filter basket and shutoff valve for the Inglese collector in view of the teachings of the Connard reference in order to collect and separate particulates from the cement slurry and a shutoff valve for controlling the flow of fluid from the outlet port.

Regarding claim 26, the collector (16) and filter basket (18) are capable of being pivoted to empty the device.

Regarding claim 28, locating the filter basket within the chute instead of in the collector would have been obvious to one having ordinary skill in the art at the time the invention was made, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70.

Allowable Subject Matter

Claim 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 4-6 and 24 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy L. Maust whose telephone number is (571) 272-4891. The examiner can normally be reached on Mon. - Thur. 7:00-5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Timothy L Maust/
Primary Examiner
Art Unit 3751

12/16/08

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